

STATE OF MICHIGAN
COURT OF APPEALS

SAVITRI BHAMA, M.D.,

Plaintiff-Appellant,

v

BRIAN R. GARVES,

Defendant-Appellee.

UNPUBLISHED

May 27, 2014

No. 313721

Wayne Circuit Court

LC No. 11-015704-NM

Before: MARKEY, P.J., and SAWYER and WILDER, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendant on plaintiff's legal malpractice claim. We affirm.

Plaintiff, a psychiatrist formerly employed by the State of Michigan, was terminated from employment. She unsuccessfully pursued administrative remedies. After losing in the circuit court, she retained defendant to handle an appeal first to this Court and then to the Supreme Court. Defendant was able to get the matter remanded to the circuit court. After again being unsuccessful in the circuit court, defendant represented plaintiff in appeals to this Court and the Supreme Court, this time unsuccessfully. Plaintiff thereafter filed the instant malpractice action.

Plaintiff's first amended complaint alleged claims sounding in breach of contract and legal malpractice. Defendant successfully pursued a motion for summary disposition. Plaintiff, who is representing herself, now appeals.

We review a trial court's decision on a motion for summary disposition de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NWd 520 (2012). Plaintiff's first argument on appeal is that the trial court erred in granting summary disposition because defendant breached a duty to advise plaintiff not to pursue the second round of appeals because they would be unsuccessful. Plaintiff's argument is without merit for at least two reasons. First, plaintiff did not allege this as a basis for her claims in her complaint. We will not now consider an allegation not raised in the complaint. See *Harbour v Correctional Med Servs, Inc*, 266 Mich App 452, 469-469; 713 NW2d 777 (2005). Second, we fail to see how this can form a claim for either breach of contract or legal malpractice. The purpose of the contract was to pursue these appeals; therefore, it can hardly be a breach to do so. As for legal malpractice, plaintiff cannot demonstrate how she would have prevailed in the underlying action without pursuing an appeal. It is an essential element of a legal malpractice claim to show that, but for the attorney's mistake, a different

result would have occurred. *The Charles Reinhart Co v Winiemko*, 444 Mich 579, 586-587; 513 NW2d 773 (1994). Perhaps if those appeals had been determined to be frivolous and sanctions were awarded against plaintiff there might be an argument that defendant bore some responsibility. But evidently, while this Court and the Supreme Court found those appeals to lack merit, those appeals were not found to be frivolous or vexatious and did not expose plaintiff to sanctions. Therefore, we cannot say that it was malpractice for defendant to accept plaintiff's engagement of legal services.

It is less clear what, exactly, plaintiff is arguing in her second argument on appeal. It appears to largely be a restatement of her first argument which requires no repeated analysis here. Additionally, plaintiff seems to argue that defendant's filing of summary disposition motions caused her to lose discovery time. It is unclear to us how this prevented plaintiff from utilizing discovery time. Next, plaintiff argues that defendant's brief in the trial court contained a mistaken statement of law. Plaintiff, of course, was free to point this out to the trial court. None of these points merit reversal.

Affirmed. Defendant may tax costs. Additionally, because this appeal is frivolous, we grant defendant's request to assess fees and costs.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kurtis T. Wilder